

# Order

**Michigan Supreme Court  
Lansing, Michigan**

December 5, 2006

Clifford W. Taylor,  
Chief Justice

ADM File No. 2006-33

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

Proposed Amendment of  
Rule 2.116 of the  
Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering an amendment of Rule 2.116 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing by the Court before a final decision is made. The schedule and agendas for public hearings are posted on the Court's website, [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its current form.

[Additions are indicated by underlining and deletions by strikeout.]

Rule 2.116 Summary Disposition

(A)-(C)[Unchanged.]

(D) Time to Raise Defenses and Objections. The grounds listed in subrule (C) must be raised as follows:

- (1) The grounds listed in subrule (C)(1), (2), and (3) must be raised in a party's first motion under this rule or in the party's responsive pleading, whichever is filed first, or they are waived.
- (2) The grounds listed in subrule (C)(5), (6), and (7) must be raised in a party's responsive pleading, unless the grounds are stated in a motion filed under this rule prior to the party's first responsive pleading. Amendment of a responsive pleading is governed by MCR 2.118.

- (3) The grounds listed in subrule (C)(4), ~~(8), (9), and (10)~~ and the ground of governmental immunity may be raised at any time, regardless of whether the motion is filed after the expiration of the period in which to file dispositive motions under a scheduling order entered pursuant to MCR 2.401.
- (4) The grounds listed in subrule (C)(8), (9), and (10) may be raised at any time. It is within the trial court's discretion to allow a motion filed under this subsection to be considered if the motion is filed after the expiration of the period in which to file dispositive motions under a scheduling order entered pursuant to MCR 2.401.

(E)-(J)[Unchanged.]

Staff Comment: The proposed amendments of MCR 2.116 would clarify that motions for summary disposition based on governmental immunity or lack of subject-matter jurisdiction may be filed even if the time set for filing dispositive motions in a scheduling order has expired. Defects in subject-matter jurisdiction cannot be waived and may be raised at any time. *People v Erwin*, 212 Mich App 55, 64; 536 NW2d 818 (1995); *People v Richards*, 205 Mich App 438, 444; 517 NW2d 823 (1994). Likewise, governmental immunity may be raised at any time. See *Mack v Detroit*, 467 Mich 186, 197 n 13 (2002).

The amendments would also clarify that it is within the court's discretion to allow a motion for summary disposition to be considered for motions based on the grounds set out in (C)(8), (C)(9), or (C)(10) if it is filed after the period for dispositive motions established in a scheduling order has expired. This clarification would reflect the holding in *People v Grove*, 455 Mich 439 (1997), that it was within the trial court's discretion to decline to accept a plea agreement offered after the date for accepting such an agreement set forth in the scheduling order had passed.

This staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2007, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). All comments will be posted on the Court's website. When submitting a comment, please refer to ADM File No. 2006-33.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 5, 2006

*Corbin R. Davis*  
Clerk